

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Garza Food Ventures, LLC (“GFV”), on the other hand, with EHA and GFV each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. GFV employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that GFV manufactures, sells, and distributes for sale in California, seasoning that contains lead and that it does so without first providing the health hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm. GFV expressly denies the allegations asserted by EHA and expressly asserts that it is in compliance with all applicable laws, including Proposition 65.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Chorizo Seasoning, Universal Product Code 853986008047 (“the Product”), that allegedly contains lead and that is manufactured, sold or distributed for sale in California by GFV.

1.4 Notice of Violation

On or around September 13, 2022, EHA served GFV, Amazon.com, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that GFV and others violated Proposition 65 when they failed to warn its customers and consumers in California of the health risks associated with exposures to lead from the Product. GFV’s participation in this Settlement Agreement does not represent an admission that the Notice

was properly served or that the contents of the Notice complied with the requirements of Proposition 65.

To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice. EHA is also not presently aware of any other claims it may have against GFV under Proposition 65, and has no present intention to bring further claims against GFV under Proposition 65.

1.5 No Admission

GFV denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by GFV of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by GFV of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by GFV. This Section shall not, however, diminish or otherwise affect EHA and GFV's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date and Compliance Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean fourteen (14) days following the execution (full signing) of this Settlement Agreement by the Parties. The term "Compliance Date" is six (6) months after the Effective Date, and the period of time from the Effective Date through the Compliance Date is the "Compliance Period."

2. COMPLIANCE, REFORMULATION, AND WARNINGS

2.1 Compliance Standard

The Product shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if consumption of the Product results in exposures less than 0.5 micrograms of lead per day. As used in this Section 2.1, "distributed for sale in California" means to directly ship Product into California or to sell Product to a distributor GFV knows will sell Product in California.

For Product that, if consumed, would result in exposures greater than 0.5 micrograms of

lead per day, and which is manufactured, supplied and distributed for sale in California, GFV shall provide one of the following Proposition 65 warnings as provided for in Sections 2.2 and 2.3.

2.2 Clear and Reasonable Warnings

In the alternative (to reformulation), a clear and reasonable Proposition 65 warning as set forth in §§ 2.2 and 2.3 may be provided for all Product that GFV manufactures, supplies and distributes for sale or use in California.

2.3 Warning Requirements

For Product that is not reformulated in compliance with Proposition 65, and as set forth in §§ 2.2, GFV shall provide one of the following warning statements, displayed in accordance with applicable California statutes, regulations, and court opinions:

Option 1:

WARNING: Consuming this product can expose you to chemicals including lead, which is known to the State of California to cause [cancer and], birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food

Option 2:

WARNING: [Cancer and] Reproductive Harm –
<http://www.p65warnings.ca.gov/food>

GFV shall use the phrase "cancer and" in the Warning if GFV has reason to believe that consumption of the Product would result in daily lead exposure greater than 15 micrograms. GFV may elect to make the Warning available to consumers, prior to the point of purchase, through electronic devices or processes (e.g., QR codes) to the extent permitted by California statutes, regulations, and courts. GFV shall inform any third-party website to which it sells its Product to include the same warning as a condition of selling the Product.

2.4 Grace Period for Existing Inventory of the Product

The requirements of Section 2 shall not apply to Product that is already in the stream of commerce—including, but not limited to, the manufacture of the Product and the possession and control of the Product by distributors and retailers—during the Compliance Period and through the Compliance Date, which Products are expressly subject to the releases provided in Section 4.1.

It is expressly understood by the Parties that GFV will not be required to remove the Product, including but not limited to any Product already in the stream of commerce and/or outside of its immediate control—for example, Product already in the possession and control of distributors and retailers—during this Compliance Period and through the Compliance Date.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, GFV agrees to pay three thousand three hundred dollars (\$3,000.00 U.S. dollars) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Within ten (10) days of the Effective Date of this Settlement Agreement, GFV shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of two thousand two hundred fifty dollars (\$2,250.00 U.S. dollars) and (b) Environmental Health Advocates, Inc., in the amount of seven hundred fifty dollars (\$750.00 U.S. dollars).

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section shall be delivered to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Federal Express 2-Day Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Melanie Perez
Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within fourteen (14) days of the execution of this Settlement Agreement, GFV agrees to pay thirty thousand dollars (\$30,000 U.S. dollars) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of GFV, and negotiating a settlement. GFV shall provide their payment to EHA's counsel in one check for thirty thousand dollars (\$30,000.00 U.S. dollars) payable to "Entorno Law, LLP".

3.3 Payment Address

All payments required under this Section shall be delivered to the following address, and it shall be the responsibility of Entorno Law, LLP, to distribute the payments owed, respectively, to OEHHA and EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

GFV agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that GFV cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after GFV receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of GFV

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and GFV of any

violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against GFV and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by GFV, and each entity to whom GFV directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on the failure to warn about exposures to lead required under Proposition 65 in the Product manufactured, sold or distributed for sale in California by GFV before and through the Compliance Date, as alleged in the Notice.

Without limiting the foregoing, this Settlement Agreement expressly releases Amazon.com, Inc., and any of its distributors. If the Product is not reformulated as specified in Section 2.1, then this release does not extend to any third-party retailers selling the Product on a website who, after being informed by GFV to include a warning as set forth above in Section 2.3, do not include such a warning.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against GFV and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead required under Proposition 65 in the Product manufactured, distributed, sold or offered for sale by GFV, before and through the Compliance Date.

4.2 GFV’s Release of EHA

GFV, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and

its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Product will develop or be discovered. EHA on behalf of itself only, on one hand, and GFV on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

7. ENFORCEMENT

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For GFV:

Jae Hong Lee
Dechert LLP
US Bank Tower
633 West 5th Street, Suite 4900
Los Angeles, CA 90071

For EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this

Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 2/15/2023

Date: _____

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: _____
GARZA FOOD VENTURES, LLC

AGREED AS TO FORM:

Date: 2/15/2023

By: 
ATTORNEY FOR ENVIRONMENTAL HEALTH ADVOCATES, INC.

AGREED AS TO FORM:

Date: _____

By: _____
ATTORNEY FOR GARZA FOOD VENTURES, LLC

Settlement Agreement.

AGREED TO:

Date: 2/15/2023

By: [Signature]
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 2/21/2023

By: [Signature]
GARZA FOOD VENTURES, LLC
General Counsel

AGREED AS TO FORM:

Date: 2/15/2023

By: [Signature]
ATTORNEY FOR ENVIRONMENTAL HEALTH ADVOCATES, INC.

AGREED AS TO FORM:

February 22, 2023

Date: _____

/s/ Jae Hong Lee

By: _____
ATTORNEY FOR GARZA FOOD VENTURES, LLC